



TITLE TALK

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Winter 2006

Volume 5, Number 5

VIRGINIA EDITION

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Happy Holidays



Top Row, Left to Right: Megan Meloon, William "Bill" Amrhein, Maureen Dunn
Bottom Row, Left to Right: Yolanda Lemus, Kevin Pogoda, Michelle Reynolds

OWNER'S TITLE INSURANCE—AN EXPENSIVE LESSON

By Maureen S. Dunn, Associate Counsel

Have you ever sat at the settlement table and reviewed the HUD-1 Settlement Statement, only to come across the title insurance premium on page 2 and hear the client say, "Oh, *that's how much it costs?* I don't want an owner's policy—take it off!"?

So you start your wise lecture on the advantages and coverage of owner's title insurance—the protection it provides, the one-time minimal premium to protect the client's biggest investment (his home), and yet the client is still not interested.

Well, here is a little ammunition that may help convince reluctant buyers that the premium is nothing compared to the risk. The following is a true story. The names have been changed to protect the innocent or, as the case may be, the remorseful.

Recently, we received a frantic call from one of our agents who was preparing the documents for a refinance for Jane

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Smith, scheduled to close the next day. The title search revealed a judgment from a prior owner. Here are the facts:

On December 20, 2002, John Doe purchased property located in the City of Virginia Beach, VA.

On February 17, 2005, in the City of Winchester, VA (a neighboring jurisdiction) a judgment in the amount of \$42,005.02 plus costs, interest at the rate of 6% and attorney fees in the amount of \$10,748.76 was rendered against John Doe. The judgment was docketed in the City of Winchester on February 23, 2005.

On February 25, 2005, a closing occurred in which John Doe sold his Virginia Beach property to Jane Smith. Jane Smith declined owner's title insurance. Of course, she had no knowledge of the judgment against her seller because the judgment was docketed in a neighboring jurisdiction and, therefore, was not part of the title work for her transaction.

Thus began the race to the courthouse between the lawyer who obtained judgment against the seller and the abstractor for the title company conducting the sale. Who do you think won? The lawyer docketed the judgment in the City of Virginia Beach (the location of our property) on March 2, 2005 at 2:25:14 p.m. The Warranty Deed to Jane Smith was docketed—yep, you guessed it—at 3:09:14 p.m. on the same day, 41 minutes later.

41 minutes! OUCH! Our poor Ms. Smith is now the proud owner of a \$53,000.00 lien. But for the protection of title insurance, she wouldn't be perusing the yellow pages in a panic-stricken search for a real estate lawyer.

We hope this true story will help you persuasively communicate the value of an owner's policy to a reluctant buyer at your closing table.



Do you have a question or topic you would like addressed in the next issue of Title Talk? Please email MMeloon@OldRepublicTitle.com.

Old Republic Title's Holiday Schedule

Christmas, 2006.....	Monday, 12/25
New Years, 2007.....	Monday, 1/1
Memorial Day.....	Monday, 5/28
Independence Day.....	Wednesday, 7/4
Labor Day.....	Monday, 9/3
Thanksgiving Day....	Thursday, 11/22
Day After Thanksgiving....	Friday, 11/23
Christmas, 2007.....	Tuesday, 12/25
New Years, 2008.....	Tuesday, 1/1

Good Practice for Paying Off Private Noteholders

by Kevin T. Pogoda, AVP and Virginia State Manager

Unreleased deeds of trust are all too common in our industry, and this is especially true for private noteholders, who may not even be aware of their obligation under Virginia Code Section 55-66.3 to deliver a certificate of satisfaction within 90 days of receiving the payoff. As a settlement agent, you may send them a release to execute with clear instructions to return the document to you, but all too often, as many of you have experienced, this process is often overlooked. And as a result, the deed of trust remains unreleased, only to be discovered years later by the next settlement company who calls you to ask you to pull your file from storage to determine what you did about that particular lien. But why put yourself through all that expense and disruption to your business? As the old adage says, "An ounce of prevention is worth a pound of cure."

Let me propose the following, multi-level solution.

As a general policy, require private noteholders to actually come to your office to receive the payoff in exchange for executing a certificate of satisfaction, and to the degree private noteholders are willing to comply, your problem is solved. Indeed, you will find that many will be all too happy to comply if it means getting paid. (But try getting them to execute a release months or years after receiving the money, and as you can well imagine, the incentive to help you is significantly reduced.)

Of course, this initial solution will not work for all private noteholders. Some will object that your office is too far away, and this objection is understandable. Others will object because they claim it is just too inconvenient to come to your office. For these individuals, I suggest that you require that they execute and deliver to your office a release prior to settlement as a condition of payoff. Private noteholders who live far from your office can execute this document before a local notary and deliver it to your office. Again, many will be all too happy to comply if it means getting paid. However, for those that perceive that a release extinguishes their lien, they may feel uncomfortable about this proposal—giving up their security without getting their money. For many, you can smooth this process over by providing an escrow letter that states that the release will only be recorded upon the private noteholder's receipt of the payoff, or returned if for whatever reason the settlement does not occur.

Hopefully, the above process will release most of the liens you pay off to private noteholders. But for a remaining few, it will just not work. They will continue to object for other reasons. Some may even insist (and rightfully so) that they have 90 days from payoff to execute a release pursuant to Virginia Code Section 55-66.3. But for those private noteholders who continue to object or for those few that actually know the Code pertaining to this issue, you probably have little or nothing to worry about. These are the kind of private noteholders who actually will follow through and execute the release you send them after payoff.

Afraid of Commitment?

By Maureen S. Dunn, Associate Counsel

Fear no more, the title commitment is your friend. Agencies produce dozens of commitments per month either in house or outsourced to a production facility. So what is so important about a commitment? Isn't it just a matter of inputting the right book and page number from your abstractor's cover sheet and then hitting the merge key with whatever title software you are using? How hard can it be?

Here are some facts that may help you look before you leap: The Commitment creates a **-BINDING** obligation of the Company (Old Republic) to issue its policy when the requirements of the commitment have been complied with and the premiums/fees have been paid. Yes, the commitment is a written agreement to issue the policy exactly as set forth in the commitment once the requirements have been removed to the satisfaction of the Company. If you fail to mention a requirement or get bored with inputting the exceptions into the commitment, but later try to squeeze them into the final policy, the lender or the owner may give you a not so pleasant call wondering why they are getting less insurance than what was spelled out in the commitment. It is called a "commitment" or "binder" for a reason!

The Basics: Items to think about but definitely not a complete list! Call your underwriter with any questions!

The commitment is binding for 6 months. But as a practical matter, update your title work if your commitment is more than 30 days old (i.e., order a bring to date).

Requirements: Carefully review not just the cover page but *all of the back up copies of your title work*. Abstractors are people too and can miss something or transpose numbers. Check the names, tenancy, legal description, date of the document and date of recording. Check taxes and tax map numbers. Review the existing liens on the property and make specific note of all unreleased trusts. Review all judgments, bankruptcies and foreclosures in the chain of title. Call your underwriter with any questions or concerns (we love the attention) as to the applicability of the foregoing. Each valid lien must be listed in your requirements section.

Is the seller or purchaser a corporation, limited liability company or limited partnership as a party to the transaction? If so, you must add those requirements specific to the legal entity to your commitment and have copies in your file of the Articles of Incorporation/Organization, Certificate of Good Standing/Fact, Corporate Resolution, Membership Roster, etc.

Is the seller or purchaser a trust? If so, you must add those requirements to your commitment requesting either a copy of the Trust or abstract of the Trust, affidavit of the settler that the trust has not changed since the date of creation or last addendum attached to trust.

Is the lender requesting affirmative mechanic's lien coverage? Is this a construction loan? Is there going to be a mechanic's lien agent appointed? There are several different requirements depending on the scenario. Call your underwriter if you are unsure about any of these requirements.

Like so many purchases these days, is there going to be a 1st and 2nd trust on the property? Is the lender requiring that the 2nd trust be insured? You will need to list both deeds of trust as requirements and take exception to the 1st deed of trust on the 2nd trust commitment.

Cross collateral property: Is the lender requesting the use of additional collateral prior to issuing the loan? If so, you will need to list the additional property in Schedule A and as a requirement that the deed of trust be recorded on that property. Don't forget to take exception to the existing liens on the additional collateral. *Please call us on all cross collateral transactions.*

Exceptions – As you go through the notes from your abstractor and add the exceptions to your commitment, spell out the terms, such as "BRL" (building restriction line). This helps to avoid confusion because some abstractors use different abbreviations. Be specific with encroachments. For instance, "This encroachment is specifically excepted from coverage" does not sufficiently inform the lender or the owner. Instead, provide detailed information, such as, "Cinder Block garage encroaches 1.5' onto common area as disclosed on the above-named survey and is specifically excepted from coverage and specifically excluded from covered risks."

Although these are the basics, the more detailed and accurate the commitment, the easier it is to do the final title policy. Please feel free to ask questions. The commitment is a binding obligation on the title agency and its underwriters. We are here to help.

*Thinking About Creating an AfBA?
Do You Wonder if Your Existing AfBA is RESPA-
Compliant?
Troon Management Corporation is Here to Help*

In our continuing efforts to help our agents in this increasingly difficult market, Old Republic Title proudly announces the recent acquisition of Troon Management Corp. Troon is dedicated to the creation and facilitation of title-related *Affiliated Business Arrangements*. The principals of Troon, Anne L. Anastasi and John F. "Chip" Lutz II, are recognized as having created one of the country's first controlled business arrangements in 1984 as well as having guided a broad base of clients in opening successful RESPA-compliant AfBAs in thirty major cities, covering sixteen states. For those of you who wish to take advantage of Troon's 40 years of title experience and 30 years of *Affiliated Business Arrangement* experience, please call our office so that we can arrange a phone consultation with you and Troon.

BASIC RULES OF FRAUD PREVENTION

Fraudulent schemes in the title industry are endless in variety and complexity. It truly boggles the mind to try to understand them all. But the good news is, you don't have to understand how every fraud works to prevent them. Most frauds can be prevented if the following 5 simple rules are strictly followed:

1. Do not insure behind naked transactions.
2. Give full and accurate disclosure on the HUD.
3. Make proceeds check payable to the seller or borrower only.
4. Get multiple forms of ID.
5. Do not give payoff check to anyone other than the lender.

Old Republic National Title Insurance Company is one of the nation's largest title insurance companies and the highest rated. Established in 1907, Minneapolis-based Old Republic Title operates in 49 states, the District of Columbia and Puerto Rico through a network of company-owned offices, authorized agents, and approved attorneys. The Old Republic Title Insurers were the first title insurers to have received financial ratings:

Standard & Poor's - AA-
Moody's Investor's Service - A1
Demotech - A"
Fitch - AA-

Known nationwide for its responsiveness, innovation, professionalism, and financial strength, Old Republic Title has the resources you need to handle your toughest title problem.

For more information about this publication or for information about our agency program, contact Kevin T. Pogoda, Assistant Vice President and Virginia State Manager or Michelle Reynolds, Operations Manager at 1-800-232-6817.

TITLE TALK is published by the Virginia Office of Old Republic National Title Insurance Company in an effort to provide information relative to our industry on a timely basis. None of the materials included in Title Talk should be deemed legal or underwriting advice or should be acted upon without prior consultation with your underwriter or counsel.

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